

5/18/09 (8)

TOWN OF ACTON

Memo

To: Board of Selectmen
From: Steven L. Ledoux, Town Manager
CC:
Date: May 14, 2009
Re: Farmer's Market

Attached, please find a draft license agreement between the Town and the West Acton Farmer's Market for the use of Pearl Street and the backyard of the West Acton Citizen's Library for this year. This draft has been approved by the Farmer's Market folks after discussions between the Town Manager and the market representatives.

It is my recommendation that the fee for this license agreement be set @ \$25 for this year. It is my view that the administrative cost of this undertaking is relatively small, (keeping in mind that the Police will evaluate and may require a detail depending on how the first couple of market days go.) The Health Department has their own applicable fee and the Highway Department provides horses that will have to be picked up at the garage. We will obviously reevaluate this for next year, but I having been involved with new farmer's markets in the past, I don't think the Town wants to provide a financial hindrance for success in the first year.

LICENSE AGREEMENT

This LICENSE AGREEMENT (hereinafter "License") is executed this ____ day of _____, 2009 by and between the TOWN OF ACTON, acting by and through its Board of Selectmen (the "Town") with an address of Town Hall, 472 Main Street, Acton, MA 01720 and _____, with an address of _____, Acton, MA 01720 (hereinafter "LICENSEE").

RECITALS

The Town owns the public way known as Pearl Street which runs between Central Street and Windsor Avenue in the Town of Acton ("Pearl Street").

The Town owns the West Acton Citizens' Library property located at 21 Windsor Ave., Acton, MA.

The Licensee has requested permission from the Town to use Pearl Street for a Farmers' Market from 8:30 AM to 2:30 PM every Sunday, starting in May and ending in October, 2009.

The Licensee has also requested permission for the public to be allowed to use the backyard of the West Acton Citizen's Library for a play area for children during the Farmers' Market hours.

The Town hereby grants a License to the Licensee to use the Pearl Street for this purpose, subject to the following terms and conditions, and the Town grants permission for the public to use the backyard of the West Acton Citizen's Library during the Farmers' Market hours, subject to the following terms and conditions:

I. USE, PURPOSE, TERM

This License is specifically, but not exclusively, granted to the Licensee for the operation of a Farmers' Market on Pearl Street from 9 AM to 1 PM every Sunday, starting July 12th and ending in November 1, 2009, provided that:

- Pearl Street shall be closed to vehicular traffic but shall remain open to pedestrian traffic during said times.
- The Farmers' Market shall be open to the general public at all times.
- The Town's emergency vehicles (fire, police, ambulance, and other public safety vehicles) may access Pearl Street at all times for public safety or other emergency purposes.

This License shall be revocable by either party upon written notice of revocation at least fourteen (14) days prior to the termination date stated within said notice. In any event, this

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License shall expire on November 30th, 2009. Both parties may agree to extend this License on the same terms (or mutually agreeable terms) for an additional term.

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II. CONSIDERATION

The consideration for this License shall be payment by the Licensee in advance of a non-refundable fee of _____ Dollars (\$____), plus the payment of all costs and expenses associated with the exercise of the license rights granted hereunder, together with the observation and performance by the Licensee of all the obligations and covenants set forth within this License, to the reasonable satisfaction of the Town.

III. USE OF LIBRARY PROPERTY

As an adjunct to this License, for no consideration, the Town grants permission for the public to use the backyard of the West Acton Citizen's Library for a play area for children during the Farmers' Market hours. The public's use of the West Acton Citizen's Library property during the Farmers' Market hours shall expressly be for recreational and educational purposes within the meaning of G.L. c. 21 § 17C, and the Town is not imposing any charge or fee therefor.

IV. INSURANCE

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As shown on the Certificate of Insurance attached hereto Exhibit A, the Licensee shall throughout the Term of the License maintain general liability insurance naming the Town as additional insured, including coverage for bodily injury, wrongful death and property damage, in an amount acceptable to the Town and in an amount sufficient to support the obligations of the Licensee under the terms of this LICENSE.

V. CONDUCT

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During the exercise of the rights hereby granted, the Licensee shall at all times conduct itself so as not to unreasonably interfere with the operations of property owners fronting on Pearl Street, or their tenants and invitees, or of the Town, and shall observe and obey applicable laws, statutes, ordinances, regulations and permitting or licensing requirements, such as may apply, if any.

VI. MODIFICATIONS AND AMENDMENTS

Modifications, amendments or extensions to this License shall be in writing and duly executed by both parties hereto to be effective.

VII. NOTICE

For purposes of this License, the parties shall be deemed duly notified in accordance with the terms and provisions hereof, if written notices are mailed via USPS certified mail, return receipt requested, to the following addresses:

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TOWN:

Town Manager
Town of Acton
Acton Town Hall
472 Main Street
Acton, MA 01720

LICENSEE:

These addresses are subject to change, and the parties hereto agree to inform each other of such changes as soon as practicable and in writing pursuant to the Notice provision above.

VIII. NO ESTATE CREATED

This License shall not be construed as creating or vesting in the Licensee any estate in Pearl Street or the West Acton Citizen's Library property.

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IX. INDEMNIFICATION

Licensee hereby agrees to indemnify, defend and save the Town harmless against and from any and all claims, damages, judgements, costs and expenses including attorney's fees, arising out of and relating to or resulting from Licensee's use and occupancy of Town property under this License, excepting only such damage or injury as may result from the willful or intentional act or omission of Town, its agents, servants or employees.

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X. TERMINATION

Licensee upon termination of this License by Town agrees to peaceably surrender to Town the Licensed Premises in the same condition in which they were delivered to Licensee, ordinary wear and tear excepted, and upon such termination all obligations of Licensee shall cease except for those which accrued prior to termination.

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XI. REPRESENTATIONS

Licensee affirms that Town has made no representations or promises with respect to Pearl Street or the West Acton Citizen's Library property, or the condition thereof, or the making or entry into this License except as may be in this License expressly set forth, and that no claims or liability shall be asserted by the Licensee against the Town for, and Town shall not be liable by reason of, breach of an representations or promises not expressly stated in this License.

This License contains all the agreements of the parties with respect to the subject matter hereof and supersedes all prior agreements and dealings between them with respect to such subject matter.

XII. APPLICABLE LAW

This License shall be governed by Massachusetts law.

XIII. EXHIBITS AND ATTACHMENTS

Any and all exhibits and attachments referenced herein or attached hereto are duly incorporated within this License.

The parties hereto have caused this License to be executed as a sealed instrument as of the date first indicated above, which shall for all purposes be deemed the effective starting date of this License; and which is signed in duplicate originals by their duly authorized representatives, and with respect to the Town, pursuant to valid majority vote of the Board of Selectmen taken in duly-noticed public meeting thereof.

TOWN OF ACTON/Town
by its Board of Selectmen
duly authorized

LICENSEE:

, duly authorized

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